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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 CHEVRON CORPORATION,

4 Plaintiff,

New York, N.Y.

5 v.

11 Civ. 691(LAK)

6 STEVEN DONZIGER, *et al.*,

7 Defendants.

8 -----x

Argument

9 May 8, 2018

4:40 p.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13
14 APPEARANCES

15
16 GIBSON, DUNN & CRUTCHER, LLP

17 Attorneys for Plaintiff

18 BY: RANDY M. MASTRO

19 ANDREA E. NEUMAN

ANNE CHAMPION

ALEJANDRO A. HERRERA

20
21 STERN & KILCULLEN, LLC

Attorneys for Plaintiff

22 BY: HERBERT J. STERN

23 STEVEN R. DONZIGER

24 Pro Se Defendant

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1 (Case called)

2 THE DEPUTY CLERK: Plaintiff, are you ready?

3 MR. MASTRO: Randy Mastro, from Gibson Dunn, for the
4 plaintiff. Ready, your Honor.

5 THE COURT: Mr. Mastro.

6 THE DEPUTY CLERK: Defendant, are you ready?

7 MR. DONZIGER: Steven Donziger. I'm ready.

8 THE COURT: Mr. Donziger.

9 The motion for an extension that Mr. Donziger made
10 with respect to the discovery motion Chevron brought on
11 recently I have granted.

12 Mr. Mastro.

13 MR. MASTRO: Thank you, your Honor.

14 We are here, your Honor, today on an application to
15 hold Mr. Donziger in contempt. May I hand up some charts that
16 I may use during the presentation, your Honor?

17 Thank you, your Honor.

18 You know, your Honor, I am reminded of that famous
19 Yogi Berra saying, "It's like *déjà vu* all over again,"
20 Mr. Donziger not complying with court orders, Mr. Donziger
21 stonewalling on discovery. But, your Honor, we are well past
22 the point where Mr. Donziger has to comply with this court's
23 judgment in this case rendered back in 2014.

24 Now, your Honor, there are -- the very purpose of that
25 judgment, as your Honor explained in your RICO decision, was

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1 that the Lago Agrio judgment was obtained by, your Honor's
2 words, corrupt means, and the defendants, Mr. Donziger and the
3 two LAP representatives, quote, may not be allowed to benefit
4 from that in any way.

5 Now, your Honor entered a judgment on March 4, 2014,
6 that had three fundamental elements:

7 Paragraph 1 imposing a constructive trust on all
8 property that Donziger has received or hereafter may receive,
9 directly or indirectly, traceable to the judgment, and that
10 Donziger shall, under that paragraph 1, transfer and forthwith
11 assign to Chevron all such property that he has now or
12 hereafter may obtain.

13 THE COURT: Look, I think I can spare you a lot of
14 talk. I have some familiarity with this case.

15 MR. MASTRO: Yes, you do, your Honor.

16 So I will race ahead only to say, as your Honor, I
17 think, knows, the first element of the contempt is that there
18 has been no such assignment and there has been no, consistent
19 with paragraph 3 of your Honor's judgment, execution of the
20 stock power transferring to Chevron all rights, title, and
21 interest in his Amazonia shares.

22 THE COURT: Why did it take you so long to get here
23 about that?

24 MR. MASTRO: Your Honor, in -- it's a fair question,
25 your Honor. The fact of the matter is that we have been

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1 pursuing multiple remedies in that regard, and I don't think
2 his contempt is any less important or actionable because we
3 coupled that contempt with a second contempt of which we only
4 became aware more recently.

5 And your Honor in that regard, about the Amazonia
6 shares, there is no factual dispute, and Mr. Donziger has, in
7 fact, not signed over his interests in the judgment or his
8 Amazonia shares. In fact, your Honor gave him certain relief
9 to deposit them in the registry of the court. We have, in
10 fact, written to your Honor letters over this past three-year
11 period occasionally bringing up the issue of Mr. Donziger not
12 complying with depositing the Amazonia shares, and we now bring
13 that to the court's attention as a matter warranting contempt
14 sanctions because it is now coupled with another, in our view,
15 egregious violation of your Honor's judgment and the injunction
16 that your Honor imposed. And that really goes, your Honor, to
17 paragraph 5 of the judgment. Paragraph 5 relates to paragraph
18 1, but it has its own force and effect as well.

19 Donziger and the LAP representatives, as your Honor
20 knows, were enjoined from undertaking any acts to monetize the
21 judgment, and that could include, without limitation, selling,
22 assigning, pledging, transferring, or encumbering any interest
23 therein.

24 Now, your Honor, Mr. Donziger has, we learned
25 recently, still been engaged in the process of attempting to

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1 sell interest -- pledge interests in the Ecuadorian judgment in
2 exchange for investor funding. In essence, doing that which,
3 as Mr. Donziger put it in his opposition brief, admitting he
4 has been doing this, he calls it the fundraising at issue
5 concerns interests, his words, in the Ecuadorian judgment,
6 being pledged for investment purposes.

7 Now, your Honor, he thinks or argues, I don't see how
8 he could not realize it is so clear and unambiguous, that
9 because that is fundraising by pledging, his word, interests in
10 the Ecuadorian judgment for investment purposes that somehow
11 absolves him from the direct prohibition your Honor entered
12 under paragraph 5.

13 But he admits too much. He does not deny that he did
14 this with Elliott and has been doing it with others, trying to
15 pledge interests in the judgment in exchange for investments,
16 to be able to enforce and monetize the judgment. And your
17 Honor's provision under paragraph 5 of the judgment couldn't be
18 clearer. He is undertaking acts, any acts to monetize by
19 pledging any interest in the judgment. By his own words, he
20 admits to trying to pledge interests to potential investors for
21 investment purposes to, in essence, sell or pledge interests in
22 the judgment to get money to be able to enforce and monetize
23 the judgment.

24 Now, your Honor, this seems to me such a clear
25 violation, but I have to go to what Mr. Donziger raises as his

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1 excuses or defenses to the violation in the injunction, and
2 this has been made easier, your Honor, because Mr. Donziger
3 doesn't deny, nor could he, given the sworn testimony of an
4 Elliott witness and the handwritten notes and materials that
5 were provided pursuant to subpoena, but he admits he is doing
6 this with Elliott and potentially others and has been doing it
7 in recent months. He says, well, I can't sell or pledge my
8 interest. I guess he means his contingent fee, his 6.3 percent
9 contingency fee, the percentage he is entitled on anything
10 that's collected. The LAPs can't pledge their interest, the
11 two LAP representatives, but the judgment, and he admits, it
12 prohibits monetization of his and Messrs. Camacho and
13 Payaguaje's interest. But he says, you know, I -- that doesn't
14 preclude other interests from being pledged.

15 Now, your Honor, I suggest to you that that is
16 sophistry and it is not consistent in any way, shape, or form
17 with the express prohibition on him, quote, undertaking any
18 acts to monetize the judgment by selling, assigning, or
19 pledging any interests in the judgment. It is not so limited.
20 Your language was as broad as could be and, your Honor,
21 Mr. Donziger's only bargaining chip in negotiation with
22 potential funders that he did personally, this is not some
23 other ally of the Ecuadorian litigation effort, this is him
24 personally, the enjoined party, his only bargaining chip was to
25 pledge an interest in future enforcement proceeds in the

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1 judgment in exchange for current funding from an investor in
2 order to be able to enforce and monetize the Ecuadorian
3 judgment. That's exactly what your Honor's injunction
4 prohibited.

5 Now, he raises your Honor's April 25, 2014 order.
6 And, again, your Honor is more familiar with that order than
7 anyone in this courtroom, but if I can take just one moment to
8 say what I think the order clearly provided for and the context
9 in which it arose.

10 Mr. Donziger argued at the time -- there was an
11 attempt to get a stay pending appeal. Mr. Donziger argued at
12 the time that the injunction could have, you know, prevented
13 him from working on the case, being paid for his work on the
14 case. Your Honor flatly rejected that argument and said that
15 it prevented him from, quote, benefiting personally from
16 property traceable to the fraudulent judgment.

17 And your Honor went on to explain that the judgment,
18 including paragraph 5, the operative paragraph here, deprived
19 Donziger of the ability to profit in any way from the Lago
20 Agrio judgment he obtained by fraud. Your Honor made very
21 clear, quote, the point of paragraph 5 was to prevent Donziger
22 and the two LAP representatives from avoiding the effect of the
23 constructive trust you imposed in paragraph 1 of the injunction
24 and judgment, that he was supposed to have assigned to Chevron
25 by selling, assigning, or borrowing on their interests in the

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1 Lago Agrio judgment, and thus at least confusing the issue of
2 traceability. That's what your Honor wrote at page 10, and
3 went on to say that paragraph 5 expressly prohibited him from
4 monetizing or profiting from the judgment, including the
5 selling, assigning, or pledging of any interest.

6 In other words, Donziger may not benefit from the
7 personal use of funds obtained by selling, assigning, or
8 pledging any interest in the judgment which would necessarily
9 be traceable to the judgment. Of course selling an interest in
10 the judgment to an investor is traceable to the judgment. And
11 of course Mr. Donziger, then using those funds personally,
12 whether it is to advance a litigation interest or he has a 6.3
13 percent contingency fee or lining his pockets, as some of his
14 own clients back in Ecuador, your Honor will recall, charged
15 him with during the trial, that he had misused and mismanaged
16 millions of dollars in funds. Either way, it is his personal
17 use, a selling or a pledging of an interest in the judgment
18 that he was not allowed to benefit from.

19 Now, your Honor -- your Honor went on, and I think
20 this made it crystal clear, your Honor went on to address the
21 argument that was made by the two LAP representatives in
22 seeking a stay pending appeal. They argued specifically, and
23 your Honor recognized it, that the litigation against Chevron
24 has been funded by investors in exchange for shares of any
25 eventual recovery. That was on page 11 of your Honor's April

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1 2014 decision. And here is where your Honor made it as crystal
2 clear as could be, in response to the LAPs' argument, when they
3 said, We will no longer be able to do that, the two LAPs, your
4 Honor said -- and that the litigation effort of the LAP group
5 as a whole and their allies would be stymied, and they wouldn't
6 be able to pursue their appeal, your Honor said, no. Your
7 Honor said nothing in the New York judgment prevents the LAPs,
8 other than the two LAP representatives who are named in the New
9 York judgment, and their allies from continuing to raise money
10 in the same fashion. That's on page 12. In other words, your
11 Honor could not have made --

12 THE COURT: So, in other words, to cut to the chase of
13 what I take to be your argument --

14 MR. MASTRO: Yes, your Honor.

15 THE COURT: -- and viewing the horizon as it existed
16 then, not as it exists today, when there is now also a separate
17 judgment against the other LAPs --

18 MR. MASTRO: Precisely, your Honor.

19 THE COURT: -- which is not at issue on this motion,
20 but is there, the essence of the point is the other 45 of the
21 Lago Agrio plaintiffs were at liberty, given the injunction I
22 entered four years ago, to go out and do whatever they wanted
23 to do to raise money, but not Mr. Donziger --

24 MR. MASTRO: Precisely, your Honor.

25 THE COURT: -- regardless of who he is getting the

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1 money for.

2 MR. MASTRO: Correct, your Honor. Your Honor made it
3 crystal clear that Mr. Donziger and the two LAPs were enjoined
4 from doing just that, but the other dozens of LAPs, their other
5 allies, they were not. So your Honor made this crystal clear;
6 and, under those circumstances, to us, it is shocking that
7 Mr. Donziger has continued, apparently with abandon, but
8 certainly we know in the case of Elliott, to have specifically,
9 within recent months, done exactly that which the injunction
10 prohibits.

11 This is not in dispute, your Honor. Mr. Donziger does
12 not dispute it at all. And I note that that effort benefits
13 him personally in any event because he has a contingency fee
14 arrangement where he gets a percentage of whatever is
15 collected.

16 THE COURT: Or so he thinks. It is subject to the
17 trust I imposed.

18 MR. MASTRO: Correct, your Honor. But this is what he
19 is out there selling. As you can see from the very notes of
20 the Elliott meeting where he is touting his 6.3 percent
21 contingency fee interest.

22 Your Honor, this is directly contrary to your Honor's
23 injunction, and I just want to say this, your Honor, before I
24 close, we don't know the full extent, the full egregiousness of
25 the contempt. We have been stonewalled in the discovery, so we

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1 want to continue to receive that discovery because I think the
2 court, in determining the contempt sanction, has a right to
3 know how extensive the contempt has been, and therefore how to
4 remedy it, but that there has been a contempt, that it is clear
5 and unambiguous, and that it is now supported by admissions
6 beyond clear and convincing evidence. He admits it and says, I
7 have the right to do it. Your Honor, it is a contempt.

8 THE COURT: Mr. Donziger, are you rising because you
9 want to say something or are you rising because you have a
10 medical problem.

11 MR. DONZIGER: Out of respect for you, but I would
12 like to say something.

13 THE COURT: Well have a seat. You will get your
14 chance.

15 MR. MASTRO: So, your Honor, we are here today to ask
16 your Honor to hold Mr. Donziger in contempt, to compel him to
17 provide discovery of the extent of his contempt, as well as to
18 his assets in connection with the money portion of the
19 judgment. He has stonewalled us on the discovery entirely.

20 THE COURT: Okay.

21 MR. MASTRO: But we ask your Honor to hold
22 Mr. Donziger in contempt, and then we will subsequently ask
23 your Honor to please impose appropriate civil contempt
24 sanctions that coerce him to comply with this court's orders.

25 And I have to say one other thing, your Honor, I asked

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1 Mr. Donziger today, before he rises, please come here today,
2 bring the Amazonia shares that you don't deny you have, bring
3 the packet of materials offered to provide the folks at Elliott
4 about the opportunity for them to buy an interest in the
5 judgment. I asked him to bring those just as a sign of good
6 faith that they could be compelled today. We came with
7 assignment documents with us for him to assign his interest in
8 the judgment as your Honor directed several years ago. And I
9 hope your Honor --

10 THE COURT: I don't remember that part.

11 MR. MASTRO: Your Honor, it is at the end of paragraph
12 1 in the judgment, that you shall transfer and forthwith assign
13 to Chevron all such property in connection with the
14 constructive trust. It includes any interest he has received
15 or may receive directly or indirectly. You know, that
16 obviously hasn't happened, your Honor. But I simply suggest
17 that when Mr. Donziger rises, I hope he will explain why he has
18 or hasn't brought those documents with him, and I hope he will
19 be made to produce them if he hasn't brought them with him
20 today.

21 Thank you very much, your Honor. Appreciate all the
22 time.

23 THE COURT: I have a question or two for you.

24 MR. MASTRO: Certainly, your Honor.

25 THE COURT: I'm a little bit confused about -- I

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1 understand the contempt part of the contempt application with
2 respect to paragraph 3. I'm not entirely clear on paragraph 5
3 in this respect. Are you asking me to proceed to adjudicate
4 the contempt application with respect to whatever exactly
5 happened with Elliott Management and to give you discovery and
6 then conceivably proceed to further contempt proceeding in
7 relation to whatever else, if anything, occurred, or are you
8 asking me for discovery first and the opportunity to make as
9 full a record as you can with respect to paragraph 5 and then
10 deal with that full record?

11 MR. MASTRO: Your Honor, I think the contempt as to
12 Elliott has been established now by admission, and Mr. Donziger
13 has suggested, in responding, that he is engaged in a broader
14 array of activity. I think that, therefore, your Honor is in a
15 position today to issue a contempt finding in relation to
16 Elliott based on the admitted record and conduct, but your
17 Honor then would have to determine what is the appropriate
18 remedy for the contempt. And I think in order to be able to do
19 that, your Honor and we need to be able to present your Honor
20 with the discovery evidence of the full extent of his contempt.
21 Who else besides Elliott has he done this with? How has he
22 been doing it? And your Honor can fashion a remedy.

23 THE COURT: Look, I don't understand that distinction.
24 There is an injunction, and he either violated it on this
25 occasion he didn't. And if there are other occasions, he

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1 either violated it or he didn't. He is subject to the
2 injunction. He is subject to the panoply of contempt remedies
3 in the event there is a violation.

4 What is it that you can imagine asking me to do down
5 the road, assuming there is a contempt on paragraph 5, that you
6 can't explain to me now?

7 MR. MASTRO: Your Honor, I would say it falls into two
8 categories.

9 One, your Honor, is that we know the approach with
10 Elliott. We don't know what his conduct was with other
11 potential investors as to which a remedy should be fashioned
12 that may have been somewhat of a different approach.

13 Number two, we don't know whether he succeeded during
14 this period in actually obtaining funding. So therefore, the
15 remedy that your Honor might order -- let's say he raised 5
16 million from investors and he now has control over that amount
17 of money. You have a right to know, we have a right to know
18 that he has now had personal use of that money by selling
19 interests in the judgment in violation of your Honor's
20 judgment, and that your Honor would then be in a position to
21 issue a contempt sanction of a very different kind, not simply
22 barring him from doing this in the future and holding him in
23 contempt, but actually other remedies about him having to
24 disgorge that money.

25 So I think, your Honor, I have to say this, we need

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1 the discovery. I think your Honor has a right to that
2 discovery. If your Honor were to decided to that you prefer to
3 have the benefit of that discovery first before making a
4 decision on the contempt, even though we think he has admitted
5 his contempt about Elliott, I understand and respect whatever
6 the court wants to do, but I think your Honor has a right to
7 know, in fashioning the remedy, how extensive the conduct has
8 been and what the results of the conduct have been, that you
9 can fashion an appropriate remedy to address his contempt if he
10 is he has actually succeeded at all, how he has been doing it
11 and what kind of steps you would want to take to make sure he
12 doesn't do it anymore and undoes the damage he has done by
13 having violated your Honor's order, including potentially
14 having raised money illegally during this period of time in
15 violation of your Honor's order.

16 THE COURT: I still don't quite have your position on
17 whether you want me, assuming it is not quite as clear-cut as
18 you do and I'm not saying whether I do or not, to wait on the
19 Elliott Management issue until you have pursued discovery or
20 not.

21 (Continued on next page)
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1 MR. MASTRO: Your Honor, I think that it's imperative
2 that you understand the full extent of Mr. Donziger's contempt
3 and whether he's actually been successful in some of these
4 efforts which are such blatant violations of your Honor's
5 orders and then be able to issue appropriate contempt
6 sanctions.

7 I simply say, your Honor, that the Elliott contempt to
8 us is already a clear violation of your Honor's orders, but we
9 believe that discovery will reveal even more egregious
10 violations and perhaps even successful fundraising, selling off
11 interest in the judgment, and the remedy under those
12 circumstances would have to be even more extensive to address
13 the contempt than the Elliott situation alone.

14 So, your Honor, we definitely want the discovery. So
15 if your Honor believes that it would be an aid to the Court for
16 the discovery to be had before your Honor rules on the
17 contempt, we understand that and accept that, because we
18 definitely want to have that discovery and the benefit of
19 giving you a full record.

20 THE COURT: OK. Thank you.

21 Your turn, Mr. Donziger.

22 MR. MASTRO: Your Honor, Amazonia is, of course --

23 THE COURT: Separate. I understand that.

24 MR. MASTRO: And that's ready for resolution.

25 THE COURT: I understand that.

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1 MR. MASTRO: Thank you.

2 Thank you, Mr. Donziger. Sorry.

3 MR. DONZIGER: Your Honor, good afternoon. Mr. Mastro
4 could not be more wrong, and I'm going to tell you why.

5 Chevron exhibited tremendous bad faith in its initial
6 motion to hold me in contempt by citing the wrong order. They
7 cited your originally RICO judgment rather than the
8 clarification order that you issued on my motion on April 25,
9 2014.

10 THE COURT: Mr. Donziger, that was not a clarification
11 order. That was a ruling on a motion for a stay pending
12 appeal.

13 MR. DONZIGER: Be that as it may, in that order you
14 made it explicit that my clients in Ecuador were allowed to
15 sell their shares in the judgment to finance litigation
16 expenses, that is, to sell shares to investors in anticipation
17 of some sort of future collection, and you distinguished
18 between doing that and actually selling shares that I owned
19 myself to profit personally.

20 And they have not met their burden. They haven't
21 presented one iota of evidence. And the Greenwald -- Lee
22 Grinberg affidavit does not make this out. It describes me
23 going to a meeting, trying to sell shares of my clients, not my
24 own shares. There is no evidence. And I promise you if you
25 got Mr. Grimwald in here to testify, he could provide no

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1 evidence, or Ms. Sullivan, that I ever have attempted or ever
2 have sold my shares. I am allowed, if I sell the shares of my
3 clients, to get paid for my work on this case. You yourself
4 said that in the April 25 order and I can quote that right
5 here.

6 You said: "Thus as long as no collections are made in
7 respect to the Lago Agrio judgment," which has never happened,
8 "the New York judgment could not prevent Donziger from being
9 paid just as he has been paid" -- you put an amount of money in
10 there -- "over the last nine or ten years." I'm going on your
11 guidance from April 25.

12 Further, I feel like I have been acting in full
13 compliance with the order as explained in docket 1801. His
14 little booklet is almost all citing docket 1875. But in 1801,
15 your Honor explicitly said we could sell shares to fund the
16 litigation. You said it in multiple ways.

17 In terms of monetization -- let me just cite one other
18 quote. You said on page 3 of the judgment, 1801:

19 "Significantly, the New York judgment did not restrict the
20 other LAPs, who remain free to sell, assign, or transfer their
21 interests, if any, in the Lago Agrio judgment and to seek to
22 enforce it anywhere in the world."

23 I'm selling, as an intermediary, the points or the
24 aspects of the judgment that are held by my clients. I am not
25 selling my own shares, because that obviously is prohibited by

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1 your Honor's RICO judgment.

2 On page 7, you write -- you distinguish between a
3 contingency fee and being paid a retainer from selling -- from
4 generating investments to sell --

5 THE COURT: You're going to have to clarify,
6 Mr. Donziger, because docket 1801 is a notice by a court
7 reporter of the filing of a transcript. So I don't know what
8 you're referring to.

9 MR. DONZIGER: I'm sorry. It's 1901. My apologies.

10 THE COURT: OK. Thank you.

11 MR. DONZIGER: Anyway, on page 7 of 1901, this is what
12 you wrote: "While any payments of a contingent fee would be
13 traceable to the Lago Agrio judgment, and thus subject to the
14 constructive trust imposed by paragraph 1, the same would not
15 be true of monthly retainer payments unless those payments were
16 traceable to the Lago Agrio judgment."

17 THE COURT: So why wouldn't a retainer payment, the
18 funds for which were raised from an investor in exchange for an
19 interest in the judgment, be directly traceable to the
20 judgment?

21 MR. DONZIGER: Because you made a distinction between
22 funds from collecting on the judgment, that is, as a result of
23 enforcement and then executing, and selling interest to pay
24 litigation expenses to pursue valid enforcement actions in
25 other jurisdictions, which you yourself said was valid and,

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1 obviously, the Second Circuit said was valid and permissible.
2 This is why you wrote, if you think back to four years ago when
3 I raised this issue, you said: At least as long as no
4 collections, that is, collections from enforcing the judgment,
5 are made in respect to the Lago Agrio judgment and funneled
6 to --

7 THE COURT: Suppose you settle the case for
8 \$20 billion. You think that might be a collection within the
9 meaning of what I wrote?

10 MR. DONZIGER: Yes. But there's no settlement.
11 There's no collection.

12 THE COURT: So it doesn't have to be by execution?

13 MR. DONZIGER: I haven't really thought that issue
14 through. All I'll say is there has been no collection on the
15 judgment. There might not ever be a collection on the
16 judgment. You have ruled in the RICO judgment that this
17 judgment can be enforced anywhere in the world except in the
18 United States by me and two other people. That was your
19 ruling.

20 THE COURT: Well, that's your version.

21 MR. DONZIGER: Well, I believe that's your ruling.
22 And then you said the New York judgment would not permit
23 Donziger from being paid, just as he has been paid at least
24 \$958,000 and likely considerably more over the last nine or ten
25 years. That is what is happening. I'm not conceding --

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1 THE COURT: In what affidavit by you does it explain
2 exactly what's happening?

3 MR. DONZIGER: I don't believe I should be obligated
4 to present evidence because they haven't met any of their
5 burden. What evidence have they presented to show I have sold
6 a single piece of my interest? Zero. And it hasn't happened.
7 I'll make that representation right now.

8 This is an attempt, with all due respect to my friends
9 at Gibson Dunn, it is an attempt to dig into my personal
10 finances, to dig in and figure out who the heck is funding this
11 case and to go subpoena them, as they've already done to
12 Ms. Sullivan, in an effort to dry up our funding. That is why
13 I say at times, even though I know you probably disagree with
14 me, that this is a SLAAP attack. We have a right to pursue
15 enforcement in other countries. That can't happen without at
16 least some money to pay expenses.

17 THE COURT: Mr. Donziger, lower the temperature. I've
18 heard this SLAAP attack argument for years. You know I don't
19 accept it, and if the name of the game is to catch a fish, at
20 least put the hook near the fish.

21 MR. DONZIGER: I'm not sure I know what you mean by
22 that, but I'll say this: Going back to 1901, you said that the
23 New York -- this is page 10 -- "The New York judgment,
24 including paragraph 5" -- this is the key paragraph on
25 monetization -- "in fact would deprive Donziger of the ability

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1 to profit from the Lago Agrio judgment that he obtained by
2 fraud," which, by the way, I disagree still. "The practical
3 effect of that, however, is not to prevent him from working on
4 the case, nor to prevent him from being paid his monthly
5 retainer for his labors. It is to prevent him from benefiting
6 personally from property traceable to the fraudulent judgment."

7 That is collection. It is not selling shares to pay
8 litigation expenses.

9 Page 11, 1901: "The litigation against Chevron has
10 been funded by investors in exchange for shares of any eventual
11 recovery." That's how it had been funded prior to the RICO
12 case.

13 And then you write: Nothing in the New York judgment
14 prevents the LAPs, other than the two LAPs named in the
15 judgment, and their allies from continuing to raise money in
16 the same fashion.

17 And then on page 27, you describe your own judgment as
18 "carefully cabined relief." And I will point out, when the
19 Second Circuit affirmed your Honor, they specifically cited to
20 the fact -- this is very unusual because there had never been a
21 RICO case absent damages in the United States, other than maybe
22 one other. It was unusual relief that you granted Chevron in
23 the RICO case compared to any other RICO case.

24 The Second Circuit, I believe if you read their
25 decision carefully, got comfortable with it precisely because

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1 your Honor tailored the relief very narrowly and made it
2 explicit that the Second Circuit's decision that this judgment
3 could be enforced by the Ecuadorians anywhere in the world
4 really prevented exactly what Mr. Mastro and Chevron are
5 seeking here, which is a complete shutdown of the ability of
6 the Ecuadorians -- and I am still their lawyer, OK. I have a
7 right to help my clients fund their own litigation. I have a
8 right, with my client's permission, to be paid for my work.
9 And none of this money violates the RICO judgment. And
10 Mr. Mastro is just wrong. And I really fear for this case,
11 which is making, by the way, tremendous progress in another
12 jurisdiction, but I fear for this case if your Honor grants
13 what Mr. Mastro is seeking. Because at that point this case,
14 which is exactly what they want because they cannot win, in my
15 opinion, on the merits, they want to shut this down through the
16 back door by drying up financing.

17 I have been in full compliance with your Honor's
18 order. I really urge you not to grant their motion to hold me
19 in contempt. This is the sixth time they've tried to do that.
20 They want to wave around that Donziger was held in contempt.
21 I've had to live with a RICO judgment on me now for many years,
22 sir. It has not been easy. Now they want a contempt citation.

23 This case is playing out around the world, in Canada
24 right now. Your judgment stands on its own. You found fraud,
25 OK. The evidence is what it is. This ultimately will be

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1 reviewed by Canadian courts, and I would urge you to please let
2 this process play out without denying the ability of my clients
3 to continue to fund this action, because I can tell you, and I
4 will represent right here, that I am the lifeline for people in
5 Ecuador to raise money. And I don't want intimidation to the
6 funders that I have had to solicit from this camp, which they
7 have done repeatedly and they did, as you know, during the RICO
8 case with Burford and Russ DeLeon and many others. If that
9 goes down again, which is what they really want to do by
10 getting this discovery, it will be virtually impossible for the
11 indigenous peoples of Ecuador and the farmer communities of
12 Ecuador to raise money to fund this litigation.

13 It's not fair, and that's why I say it's SLAAP,
14 because it really is designed -- I have a right to advocate, no
15 matter what you think of me, and I know you don't have a very
16 high opinion of me. I have a right to continue advocating for
17 my clients, and I have a right to sell their shares to raise
18 money for perfectly legal action in Canada that is progressing,
19 as you know, with three straight appellate court victories in
20 our favor.

21 So I don't get what's happening here. This is an
22 attack on the First Amendment and the ability of me to be a
23 lawyer or an advocate because, as you know, I might not be a
24 lawyer because there's a Bar complaint against me based on your
25 findings. So I would urge you to take this no further.

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1 You know, if -- I'll say this: If you want
2 reassurance from me that I have not sold my interests, there
3 are ways to do that in camera without the Chevron lawyers
4 finding out and starting to subpoena all of the goodhearted
5 individuals who didn't fund me because they like Steve
6 Donziger, but because they care about the people down there.
7 And not even you dispute those people are living in terrible
8 life conditions as a result of oil pollution. They deserve a
9 chance, sir, to continue fighting this.

10 And, you know, this has gone on now -- I've had to
11 live with RICO thing filed on February 1, 2011. My life
12 changed that day, and it has never recovered. There's only so
13 much that a lawyer should have to take from these types of
14 attacks.

15 If it's your opinion, sir, that I can't raise money, I
16 need clarity, because right now, if you look at 1901 that I'm
17 citing, that is not clear at all. I believe I'm in compliance
18 with 1901 right now. I would urge you to go back and really
19 review that carefully, to think deeply about what I'm saying.

20 You know, paragraph 5, cited by Mr. Mastro, also only
21 applies to collections; it doesn't apply to fundraising. You
22 say in 1901 -- I was concerned with paragraph 5 when I filed
23 that motion way back that your monetization argument prevented
24 me from raising money, and you wrote that the idea that
25 monetization would prevent financing was so unfounded that it

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1 bordered on the irresponsible by me. How can I take away from
2 that anything other than that we are allowed to continue
3 financing? I'm not selling my shares; I'm selling my clients'
4 shares.

5 And by the way, the agreements for these deals are
6 between people in Ecuador who own the judgment and the
7 investors.

8 As regards Amazonia --

9 THE COURT: Who owns the judgment?

10 MR. DONZIGER: What's that?

11 THE COURT: Who owns the judgment?

12 MR. DONZIGER: Well, the Amazon Defense Fund is the
13 beneficiary of the judgment as part of the collective interest
14 of all those affected. So if there is a collection, the fund
15 would flow to the Amazon Defense Coalition, which is known as
16 the FDA in Ecuador, and they would be obligated to use those
17 funds consistent with the Ecuador judgment -- I mean the
18 Ecuador judgment, which would be for cleanup purposes.

19 THE COURT: I'm not exactly sure that was an answer to
20 my question. I don't know whether you meant it to be or not.

21 MR. DONZIGER: Well, when you say who owns the
22 judgment, it's a class action Ecuador style, and it's owned by
23 all the people affected, with the FDA being the nonprofit
24 entity designated by the court to receive the funds. I don't
25 know if that answers your question or not.

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1 THE COURT: Well, let's see.

2 MR. DONZIGER: As regards the Amazonia issue, because
3 there's two separate bases they're arguing where I should be
4 held in contempt, one is this raising money issue, which I just
5 argued; the second issue, the Amazonia issue, I believe, is
6 completely baseless, and I'm going to tell you why.

7 OK. I have never violated your Honor's order. OK. I
8 am a lawyer in good standing of this state and this court as I
9 sit here today. I am not violating court orders. They control
10 Amazonia. They have my shares already.

11 THE COURT: How exactly did that happen?

12 MR. DONZIGER: They sued Amazonia in Gibraltar, as I
13 understand it. And the people who run Amazonia, there's a
14 board of directors, there was an initial attempt to defend, and
15 ultimately they just gave up for whatever reason, lack of
16 resources. And they got a default judgment against Amazonia,
17 and then the entity, as I understand it, was put into
18 liquidation.

19 When I filed my opposition to the contempt motion, I
20 mentioned that I wasn't sure of the status of it because they
21 have never disclosed the status of it, and I assume Mr. Mastro
22 had three banker boxes of stuff from that case delivered to my
23 apartment by 9:00 a.m. the next morning. So somewhere in this
24 massive amount of material, I assume, is the answer to that
25 question.

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1 But I don't think we should play possum here. I think
2 you should ask the Chevron lawyers do they own my shares,
3 because I don't, as far as I know, have a document that has
4 shares on it. However, I will be more than happy to do
5 whatever the Court instructs, because I think this is a
6 completely ridiculous issue.

7 THE COURT: I instructed in 2014. We are all waiting.

8 MR. DONZIGER: Why didn't they pursue it for four
9 years?

10 THE COURT: I asked that question. That's neither
11 here nor there.

12 MR. DONZIGER: Just so you know --

13 THE COURT: You're a lawyer who says he complies with
14 court orders. There is a court order outstanding since 2014
15 that compels you to deliver an executed stock power. I am told
16 it has never happened. You have not denied that.

17 MR. DONZIGER: Well, that's not the end of the story,
18 sir, OK. In 2014 -- this was the problem in 2014. I sent them
19 a letter saying I would be more than happy to negotiate
20 something that would work for both of us.

21 THE COURT: I read the letter, Mr. Donziger.

22 MR. DONZIGER: OK. They never responded.

23 THE COURT: So what?

24 MR. DONZIGER: I acted in good faith.

25 THE COURT: So what?

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1 MR. DONZIGER: So why are they here now four years
2 later? Because we're winning in Canada?

3 THE COURT: They won. They got a judgment. You made
4 them an offer. They blew it off. Not the first time in legal
5 history, not the last.

6 MR. DONZIGER: Well, I'm representing to you today
7 that I do not believe I have violated the order. I have looked
8 for a way to do it, because had I done that, there would have
9 been all sorts of other problems with divestment. Had I won
10 the case on appeal, number one; number two, I ran into problems
11 with my clients because I was not allowed to transfer shares
12 absent an agreement by the board of directors in Amazonia.

13 But I will say this: It doesn't matter, because they
14 own it. OK. This is a fake issue. And if they want me to
15 sign my shares over, which they already have because this would
16 be a public relations exercise for them, I'm happy to do it. I
17 am not going to sit here and be held in contempt over something
18 that's completely meaningless, when I'm here today ready to do
19 that.

20 So tell me what you want me to do. He says he has
21 something for me to sign. Well, why hasn't he presented that
22 to me? Where is it? I'm sitting here. He sent me an email
23 this morning looking for discovery. Why is he playing possum
24 with me? To make me look foolish? Just give me the document
25 you want me to sign.

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1 Do you have it, sir? I mean, come on.

2 MR. MASTRO: I do have an assignment here, and I asked
3 you to bring the shares to court today.

4 MR. DONZIGER: I don't have the shares, sir. I told
5 you that.

6 And beyond that, excuse me, they filed a motion to
7 compel discovery.

8 THE COURT: We're not getting there.

9 MR. DONZIGER: I have a right to answer that before I
10 deal with these issues.

11 THE COURT: Did I just give you an extension to
12 respond?

13 MR. DONZIGER: I appreciate that. Thank you. I
14 appreciate that.

15 THE COURT: All right.

16 MR. DONZIGER: But, I mean, when starts trying to say
17 why don't I bring stuff to court, these issues are still being
18 litigated.

19 To authorize broad-based discovery into my files
20 again -- I remind you I sat for 19 days of depositions between
21 RICO and 1782 process. Your Honor ordered me to turn over, as
22 you know, my entire case file, entire case file at that time,
23 17 years of work. To have to now go through that process again
24 when they haven't shown a single piece of evidence that I've
25 sold my own shares would be, in my mind, very inappropriate. I

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1 really would urge you, please, not to do that.

2 If there is a narrow concern based on 1901 -- they
3 don't believe me. They think I'm up here lying perhaps. So
4 they're like, Oh, he's probably telling not telling the truth.
5 How do we know he hasn't sold his shares? Well, I'm a lawyer
6 and I'm representing to you as an officer of the court right
7 now I have not sold my own shares. And if you don't believe
8 me, if you need more than that, please fashion a narrow
9 solution for me to give you materials in camera to prove that
10 to you, and I can. I can do that if you're willing.

11 And if you come away satisfied that that's consistent
12 with docket 1901, which explicitly allows the LAPs to sell
13 shares in the case to finance litigation expenses -- again, I'm
14 not selling my shares, I'm selling their shares. And I have a
15 fiduciary duty to them, and they understand what's happening
16 with the money. And, by the way, this issue of my clients
17 being concerned about this and that, that's a whole other
18 group, UDAPT, that's not my client. That's a footnote in their
19 reply.

20 I am happy, would be happy -- well, not happy, but I
21 would be more than willing to work with you and to see if that
22 would satisfy your Honor before we go through this incredibly
23 cumbersome process of sitting for depositions, turning over
24 documents. It's expensive; it's time-consuming. And with all
25 due respect, you might not like this, but I'm heavily, heavily

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1 focused on helping my clients in Canada do what you said was
2 appropriate, do what you authorized to do and the Second
3 Circuit authorized, which is deal with that very complex
4 litigation.

5 The other problem is I have very little
6 infrastructure. I'm still a sole practitioner working out of
7 my apartment. For them to give me this incredibly burdensome
8 subpoena -- by the way, one of the things they're seeking is
9 for me to tell them every single conversation I have had since
10 the RICO judgment came down about the Ecuador case with anybody
11 in the world. I don't know how I would start doing that. This
12 is designed to hurt me. It is designed to get in the way of my
13 advocacy.

14 If there is a legitimate part, legitimate information
15 that they are seeking in discovery, this has to be severely,
16 severely narrowed. And to me, if there's anything -- I think
17 this whole thing should be shut down. That's what I'm asking
18 you for. But if there's anything that might be arguably legit
19 about what they're seeking, it's something related to the
20 narrow issue of am I selling my own shares. And if you're not
21 going to accept my representation, I can prove to you that I
22 have not sold my own shares, and that's what it should be
23 limited to.

24 Do you have any questions or anything?

25 THE COURT: No.

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1 MR. DONZIGER: Thank you.

2 THE COURT: Thank you.

3 Mr. Mastro.

4 MR. MASTRO: Thank you, your Honor.

5 Your Honor, I'll be uncharacteristically brief. Your
6 Honor, Mr. Donziger describes himself as a lifeline. I think
7 your Honor knows from the submissions we've put in, he's
8 actually now in an ongoing battle with Mr. Fajardo and others
9 as to who actually represents the indigenous people in Ecuador.
10 So I respectfully suggest that that characterization doesn't
11 accurately describe the situation.

12 Your Honor, two separate things: The Amazonia shares
13 which your Honor ordered back in March 2014, he doesn't deny
14 that he hasn't turned it over, he doesn't deny that he --

15 THE COURT: He says he doesn't -- I understand him to
16 be saying he doesn't have a stock certificate.

17 MR. MASTRO: Right. But that doesn't prevent him,
18 your Honor, from effectuating something that assigns his
19 interest, and your Honor ordered this back in 2014, on appeal
20 ordered him to turn it over into the registry of the court. I
21 hear Mr. Donziger saying two things. I hear him saying, one,
22 and this is what he said in his brief, he said he can't do it
23 because a transfer of shares will materially prejudice my
24 clients. He says, I can't do it. Then he says, Oh, but I will
25 do it now. He speaks out of both sides of his mouth in the

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1 same conversation, but he hasn't done it.

2 I just want to be clear to your Honor. It is an issue
3 we've raised in the past. In fact, there were appeals and
4 there was Supreme Court denial of cert on June 19, 2017. We
5 wrote to your Honor immediately after the denial of cert, when
6 there could no longer be any excuse whatsoever for why -- and
7 this is docket entry 1922, your Honor -- why he hadn't turned
8 over the shares. And of course, when we became aware of his
9 latest contempt, within months later, in soliciting investors
10 by selling off shares of the interest in the judgment, we
11 coupled the two together in this contempt application.

12 So to us there could be no doubt. And the excuse, and
13 it isn't even an excuse, that even after we obtained the
14 judgment of this Court that he was to turn over the Amazonia
15 shares and assign that interest, that we went to Gibraltar
16 against Amazonia, not him, obtained a money judgment against
17 Amazonia and have put them into a liquidation proceeding, OK,
18 which, by the way, does not mean under English or Gibraltar law
19 that it doesn't still exist.

20 THE COURT: Of course.

21 MR. MASTRO: We have a right to our remedy here, just
22 like we're pursuing our remedy there. We shouldn't even be
23 having this conversation. He's in contempt about that and
24 should be so held.

25 THE COURT: Are you in a position to inform me as to

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1 what, if any, rights Amazonia has with respect to the
2 Ecuadorian judgment?

3 MR. MASTRO: Your Honor, it was our understanding at
4 the time that the Ecuadorian judgment as proceeds were -- and I
5 think we made a record of this during the trial -- that as
6 proceeds from the judgment were collected, they were to go
7 through Amazonia for a distribution system that included
8 Mr. Donziger's personal contingency fee, as well as other
9 distribution of the moneys. That was the state of play that we
10 proved in the RICO trial. I think that's why your Honor
11 ordered --

12 THE COURT: Is there any reason to think that isn't
13 still the state of play?

14 MR. MASTRO: Well, your Honor, because there's been so
15 many violations of court orders and so many attempts to change
16 the landscape, but we believe that Amazonia is still the entity
17 that was created for that purpose and exists for that purpose.

18 THE COURT: So if that were true, for the sake of
19 discussion, what you have is a Gibraltar corporation which is
20 in liquidation, which I understand to be analogous to
21 bankruptcy if it were in the United States; there is an
22 outstanding judgment for whatever billions of dollars; the
23 judgment you obtained is against it; it is unable now to pay
24 that judgment; there is still equity owned by the equity
25 shareholders who were there to begin with; and it has a

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1 contingent right to receive anything that ultimately is
2 collected on the judgment. Therefore, if the judgment is
3 collected, you have a company in litigation which has nine,
4 ten, whatever number of billions of dollars in collections, a
5 \$28 million, or whatever it is, judgment payable. The company
6 is suddenly enormously solvent, and the equity is highly
7 valuable.

8 Is that about right?

9 MR. MASTRO: Your Honor, absolutely correct.

10 Now, your Honor, to us the Amazonia question is
11 crystal clear and right for decision.

12 THE COURT: So here's your \$64 question.

13 MR. MASTRO: Yes, your Honor.

14 THE COURT: Do you have the stock power you want him
15 to sign?

16 MR. MASTRO: Your Honor, we do have a share transfer
17 form and assignment ready to present to Mr. Donziger right now.

18 THE COURT: Well, you can give it to him. I'm not
19 going to insist that he sign it. He is a free actor. Your
20 motion is outstanding. I imagine I'll rule on it soon. And
21 you can let me know, both of you, whether it's in that regard
22 moot.

23 MR. MASTRO: Thank you, your Honor.

24 It's two forms actually relating to the different
25 shares of stock.

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1 THE COURT: Whatever. I'm not getting involved in
2 that negotiation --

3 MR. MASTRO: Thank you, your Honor.

4 THE COURT: -- for whatever it is.

5 MR. MASTRO: Let the record reflect that I just handed
6 Mr. Donziger the two forms that are share transfer forms
7 related to Amazonia.

8 Now, your Honor --

9 THE COURT: I won't do anything for 24 hours.

10 MR. MASTRO: Thank you, your Honor.

11 THE COURT: Maybe longer.

12 MR. MASTRO: Your Honor, as to the issues relating to
13 your April 2014 decision, I don't want to belabor them other
14 than Mr. Donziger, reading aloud some of the same sentences
15 that I read from that opinion which prove beyond question that
16 your Honor was saying that he and the two LAP representatives,
17 as the enjoined parties, could not be involved in undertaking
18 any acts to sell, transfer, pledge any interest in the
19 judgment.

20 MR. DONZIGER: He didn't say that.

21 MR. MASTRO: Excuse me, please, sir.

22 MR. DONZIGER: He didn't say that, sir.

23 THE COURT: Mr. Donziger, look, I nearly had to have a
24 criminal defendant dragged out of court this afternoon for
25 doing that, and I don't want to have to do it with you. Quiet.

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1 You had your chance. He didn't interrupt you.

2 MR. MASTRO: And I just wanted to say two more things
3 very briefly, your Honor.

4 Mr. Donziger tries to say, in revisionist history,
5 that paragraphs 1 and 5 of the judgment could relate only to
6 collections. Actually, the word "collection" is not used in
7 either of those two paragraphs. It talks about moneys
8 traceable to the judgment. You chose those words carefully,
9 your Honor.

10 And I suggest just this, your Honor: We're not here
11 today, as Mr. Donziger likes to put it, to hurt Mr. Donziger.
12 He already hurt himself by his own actions. We're here to
13 enforce a judgment, a judgment in which he is in contempt of,
14 and that's the only reason we are here, your Honor. We want to
15 know the truth about the full extent of his contempt, and then
16 we ask your Honor to impose appropriate contempt sanctions.

17 Thank you, your Honor.

18 THE COURT: All right. Thank you.

19 I'm going to take this under advisement.

20 MR. DONZIGER: Can I respond, please, just briefly?

21 THE COURT: Very briefly.

22 MR. DONZIGER: The word "collection," sir, he's right,
23 it's not used in the order he cites, but it is used extensively
24 in docket 1901. So he's citing the wrong docket, wrong
25 document. I would urge you, please, to focus on what I focused

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1 on, which is your Honor's order from April 25, 2014, which is
2 the latest version of whether shares can be sold.

3 And your order -- why are you looking at me like that?
4 Your order doesn't prohibit me from selling my client's shares.

5 THE COURT: OK, Mr. Donziger. I have your position.
6 Thank you.

7 Now, there is one other pending motion, at least, that
8 I want to address briefly. There is the motion that Chevron
9 made on May 4 to compel responses to the post-judgment
10 discovery request. I've just extended Mr. Donziger's time to
11 respond. If Chevron wishes to reply, it can do so by Monday.
12 I'll see you all back here Tuesday afternoon at 4:30 to deal
13 with that.

14 OK. Thank you.

15 MR. MASTRO: Thank you, your Honor.

16 (Adjourned)